



Pennsylvania Catholic Health Association

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Sister Clare Christi Schiefer, OSF
President
November 16, 2006

Gerald F. Radke
Director, Bureau of Facility Licensure and Certification
Department of Health
Room 932, Health & Welfare Building
7th and Forester Streets
Harrisburg, PA 17120

**Re: Proposed Rulemaking; [36 Pa. B. 6403, October 21, 2006] - Sexual Assault Victim
Emergency Services**

Dear Mr. Radke:

On behalf of the Pennsylvania Catholic Health Association (PCHA) and the Pennsylvania Catholic Conference (PCC), the following comments are submitted concerning the Department of Health proposed regulations dealing with Sexual Assault Victim Emergency Services. PCHA is a statewide organization that represents the Catholic health ministry in Pennsylvania in public policy matters and is closely aligned with PCC, the public affairs arm of the Catholic bishops in Pennsylvania.

PCHA and PCC are very concerned about the requirements in the proposed regulations as noted below.

§101.4. Definitions.

The proposed regulation is broader than necessary to address the availability of Plan B, and raises substantial questions about the impact of the definition of emergency contraception. Included in the definition would be a drug which inhibits or prevents "the implantation of a fertilized ovum within the uterus." To adopt such a definition effectively means that the Department legislates what constitutes the beginning of life and ignores the widely held position that life begins at conception. The regulations would mandate that hospitals administer emergency contraception under circumstances where it is probable that conception has occurred. That would be tantamount to a Commonwealth ordered termination of life – a matter clearly not to be ignored – and one which, in any event, seems to be beyond the authority of the Department even given the broadest possible reading of its regulatory authority under the Health Care Facilities Act. It is one thing for emergency contraception to simply be defined as, for example, a drug which, among other effects, would prevent implantation. It is quite another matter for the government to mandate that a drug - the sole purpose of which would be prevention of the implantation of a fertilized ovum – would be standard protocol.

PCHA and PCC submit that a way to avoid the problematic definition would be to adopt the following definition of "emergency contraception":

A drug, drug regime, or device approved by the Food and Drug Administration, including Plan B, that is used after sexual intercourse to inhibit or prevent ovulation of fertilization.

§117.53 Emergency contraception.

The proposed regulations permit a hospital to require that a victim submit to a pregnancy test (§117.53(b)). As the Department is aware from its review of the *Guidelines for Catholic Hospitals Treating Victims of Sexual Assault*, Catholic hospitals look to a second test before determining that emergency contraception can be ethically administered. The referenced section might be read to preclude that test. To avoid that possible reading, the section should permit "appropriate testing". That approach is necessary, it is submitted, to protect the facility's exercise of conscience. To effectively ban such testing would itself seem to ignore statutory conscience protection.

§117.55 Emergency contraception informational materials.

It appears that there is an internal inconsistency in the proposed regulations. Section 117.55 sets forth duties imposed on hospitals which provide sexual assault emergency services. Our information suggests that the Catholic hospitals in Pennsylvania would fall in this category but would, consistent with the *Guidelines for Catholic Hospitals Treating Victims of Sexual Assault*, after administration of an ovulation test, not administer emergency contraception if the test would suggest that conception might have occurred. Under §117.55, if emergency contraception is not obtained at the hospital, the hospital's obligation is to provide information about where emergency contraception can be obtained (§117.55(b)(3)). No requirement is imposed to transport the victim. However, it seems that a Catholic hospital, because it chooses to exercise the conscience rights assured under the Health Care Facilities Act (35 P.S.448.902(a)), the Abortion Control Act (18 PaC.S.A.3213), and the Religious Freedom Protection Act (71P.S.2407)("RFPA") must transport (§117.57(2)) the victim. This inconsistency further highlights the burden placed on a religious facility which exercises religious conscience. This penalty or tax is not statutorily permitted and, in fact, is statutorily proscribed.

The requirement at Section 117.55(b)(3), which would apply to religious facilities that provide sexual assault emergency services also presents a problem. In effect, a facility would be required to give a victim a referral list which is directly inconsistent with the manner in which hospitals are permitted to exercise religious conscience under the Religious Freedom Protection Act and constitutes the aid, abetting or facilitating which the Abortion Control Act prohibits as a power of the government.

§117.57 Religious and moral exemptions.

The regulations at Section 117.57 provide a "conscience" exception for religious and secular hospitals. Nothing less would be permitted pursuant to Section 902(a) of the Health Care Facilities Act. (35 P.S.448.902(a)). However, a facility which exercises the conscience protection so clearly set forth in the Act and recognized in the regulations, will, in some cases, be required to provide victims with information about where emergency contraception may be obtained (§117.55(b)(3)) and arrange to have the victim transported, at no cost to her, to a facility which does provide emergency contraception. (§117.57(2) and §117.58(b)(2)). It is submitted, for reasons stated below, that the regulations must be revised.

Requiring transport of a victim by a religious facility not willing to provide emergency contraception would constitute, for a Catholic hospital, what ethically is said to be "material cooperation." This is itself an abridgment of the Religious Freedom Protection Act, since it would

force a Catholic hospital to assist in the rendering or procuring of emergency contraception. In addition, the transport itself for the purpose demanded by the regulation would be a service contrary to the stated policies of Catholic hospitals, and, therefore, directly contravenes the limitation imposed upon the Department by the Health Care Facilities Act.

A religious facility's willingness to provide information about sexual assault counselors, and to have the victim meet with a counselor in person at the hospital obviates the need for transportation. Such transportation would be highly unusual in that the transport would not be a "medical emergency," since the instances when a religious facility would not provide emergency contraception would be when conception was a possibility. (In all instances, the facility would provide medical care for injuries, forensic evidence collections and information about emergency contraception, all of which eliminates the "medical emergency.") The termination of that life does not constitute a medical emergency, even though PCHA recognizes that a victim may opt to receive emergency contraception or prevent implantation.

Imposing such a transportation requirement on a religious facility, in effect, imposes a tax upon the exercise of religious conscience. Such a tax is wholly inconsistent with the General Assembly's clear articulation of the conscience rights of religious facilities in RFPA. That provision required only notice of a facility's policy. The General Assembly never imposed an additional requirement of transport and, to that extent, the regulation is directly inconsistent. It forces a religious facility to aid in the dispensing of emergency contraception in instances which the facility would deem to be abortifacient. Requiring such aid of facilitation in dispensing an abortifacient is clearly proscribed under the Abortion Control Act (18 PA.CSA. 3213(d)). The Church's concern about emergency contraception is well documented. The Pontifical Academy for Life noted in a statement about the "So-called "Morning-After Pill"" (October 31, 2000) that "...the proven "anti-implantation" action of the morning-after pill is really nothing other than a chemically-induced abortion. It is neither intellectually consistent nor scientifically justifiable to say that [it] is not the same thing."

The Congregation for the Doctrine of the Faith, in the "Instruction of Respect for Human Life in its Origin and on the Dignity of Procreation", Donum Vitae (February 22, 1987) (I, No.1:AAS 80 (1988)) notes that "[t]he human being is to be respected and treated as a person from the moment of conception" (p.79). In addition, the Bishops in Pennsylvania have, for years, been following this issue closely and have set forth clear guidelines consistent with the Church's view of abortifacient drugs.

The requirements for a referral list and/or for transportation to obtain emergency contraception which will likely be abortifacient in its effect, require a course of conduct which is ethically prohibited for Catholic providers, and totally ignores the broad and clear protections afforded under the Health Care Facilities Act, the Abortion Control Act and the Religious Freedom Protection Act.

117.58 Hospitals not providing sexual assault emergency services.

Section 117.55 would require religious hospitals covered by Section 117.57 to provide notice to the Department. How would that section apply if emergency contraception would be covered in most, but not all, cases? The section also requires that a hospital notify "all law enforcement agencies, which may transport or refer a sexual assault victim," of a hospital's election to not provide sexual assault emergency services. How is a hospital to determine if it has complied with this? There is no geographic limitation, and, conceivably then, the notice could cover many counties if not significant parts of the state. The same concern exists in connection with the notice to ambulance and emergency medical care and transport services. How will a hospital know if it has complied? What burden does the hospital have to update the list? How closely must it monitor changes? Finally, how does a hospital comply if it provides sexual assault emergency services except for emergency

contraception for the relatively rare cases which may occur at facilities complying with the Bishops Guidelines?

Additional comment.

Not addressed in the regulations is the U.S. Food and Drug Administration approval of emergency contraception as an over-the-counter drug (except in limited cases). The imposition of a mandate, even with required religious and moral exemptions, should be carefully re-examined in light of this development.

Catholic hospitals in Pennsylvania have a long history of providing compassionate quality care to victims of sexual assault. Based upon the above significant comments, PCHA and PCC submit that changes to the proposed regulations are essential and required by law, so important concerns are addressed. PCHA and its members stand ready to work with the DOH as this process goes forward.

Thank you for your attention.

Sincerely,

Sister Clare Christi Schiefer, OSF
Sister Clare Christi Schiefer, OSF
President

SCC/mjs

cc: PCHA Board of Directors
Dr. Robert J. O'Hara, Jr.
Richard E. Connell, Esq.
Dr. Calvin B. Johnson
Representative George T. Kenny
Senator Jake Corman
Mr. John Jewett

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